



REPUBLIC OF KENYA



**Nanjala v Adbi & another (Civil Appeal 128 of 2019)
[2024] KEHC 1116 (KLR) (Civ) (12 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 1116 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL 128 OF 2019

DAS MAJANJA, J

FEBRUARY 12, 2024

BETWEEN

HELLEN NANJALA APPELLANT

AND

JAVO MOHAMED ADBI 1ST RESPONDENT

BENSON THAIRU GAITHUGO 2ND RESPONDENT

(Being an appeal from the Judgment and Decree of Hon. A. Makau, SRM dated 16th November 2018 at the Magistrates Court at Nairobi, Milimani in Civil Case No. 1738 of 2017)

JUDGMENT

1. The suit before the Subordinate Court resulted from a road traffic accident that occurred on 11.10.2015 along Gachie road involving motor vehicle registration no. KAL 217D Nissan Matatu in which the Appellant was a passenger. As a result of the accident, the Appellant suffered the following injuries as particularized in the Plaint dated 28.02.2017: fracture of the distal fibular; right leg swelling and pain; bruising on the medial carpet of the right ankle joint, swelling and reduced range of movement.
2. Since the Respondents failed to enter appearance, the court entered interlocutory judgment. At the formal proof, the Appellant testified and relied on the medical report of Dr Wambugu and on the letter of Dr. Hassan Warda from Kiambu Sub County Level 4 Hospital. The trial court awarded the Appellant Kshs. 500,000.00 and Kshs. 8,900.00 general and special damages respectively.
3. The Appellant is dissatisfied with the award of general damages and raises two grounds of appeal in her Memorandum of Appeal dated 06.03.2019:



- a. That the learned trial magistrate erred in fact and in law in making an award for general damages for pain and suffering that was inordinately low.
 - b. That the learned trial magistrate erred in law and in fact in failing to appreciate the nature and extent of the appellant's injuries as well as the appellant's submissions thereon and thus made an award that was inordinately low.
4. The Appellant has filed written submissions which I have considered. The thrust of her appeal is that the award of general damages is inordinately low as compared to the type of injuries suffered.
 5. As I consider this appeal, I am reminded of the principle governing an appellate court's discretion to interfere with an award of damages by the trial court that an appellate court should not intervene merely because it would have awarded a different figure had it tried the case at first instance (*Kemfro Africa Limited t/a Meru Express Services & another v. A.M Lubia and another (No. 2)* [1982-88] KAR 727). An appellate court may disturb a trial court's award of general damages when it is inordinately high or inordinately low indicating that the trial court proceeded on a wrong principle or misapprehended the law. As it is, damages are always to be pegged on injuries suffered and guided by comparable cases (see *Maore v Geoffrey Mwenda* [2004] eKLR).
 6. In the present case, the appellant suffered a fracture of the distal fibula and other soft tissue injuries including right leg swelling and pain; dislocation of the right ankle joint that caused bruising, swelling and reduced range of movement. She was seen as an outpatient at Kiambu Level 4 hospital on 11.10.2015 where Plaster of Paris (POP) was applied and she was released on analgesics and antibiotics. She was re-examined on 08.07.2016 by Dr. Wambugu who observed that her general condition was good and that she had made adequate recovery from the injuries. The doctor assessed permanent stability at 6%.
 7. At the trial court, the Appellant relied on [P.N. Mashru Limited v Omar Mwakoro Makenge](#) [2018]eKLR to support her proposal for Kshs. 1,800,000.00 as general damages. The Respondent in the said case suffered loss of consciousness at the time of accident; sustained fracture of the femur distal third; fracture of the temporal bone with haematoma; head injury to the right frontal parietal bone with brain oedema; left subdural haematoma. Metal plates were inserted in the leg to manage injuries. He also suffered memory loss. He was admitted to hospital for 17 days. The trial court awarded Kshs. 1,200,000.00 for pain and suffering which was sustained by the High Court. She also relied on [Lucy Waruguru Gatundu v Francis Kinyanjui Njuku](#) [2017] eKLR where the claimant suffered a right femur fracture (distal end) with bone loss, right tibia segmental fracture and right fibular segmental fracture. The trial court awarded Kshs. 1,600,000.00 in general damages which was upheld by the High Court. The High Court pointed out that a medical examination conducted on the Respondent a year later after the accident revealed that he was still supported by bilateral auxilia crutches; he had severe tenderness and stiffness of the right knee joint; and his left lower limb had shortened by 3cm; and the Respondent was having severe right knee joint osteoarthritis.
 8. In the present case, observations of the doctor upon examination a year and 3 months after the accident revealed that the Appellant was generally in good condition, on the right lower limb, she walked unaided with a slight limping gait though there was no shortening of the limb. The right ankle joint was swollen, movement was within normal range but elicited tenderness. The overall observation was that the Appellant had made adequate recovery from her injuries, the fracture/dislocation had united though she was predisposed to early onset of osteoarthritis.
 9. A comparison of the two cases will demonstrate that the injuries suffered by the respective claimants are not comparable to those sustained by the Appellant. In [P.N. Mashru Limited v Omar Mwakoro](#)



Makenge (Supra), the claimant suffered way more severe injuries including head injuries that led to memory loss. In the present case the Appellant was only managed as an out-patient for one day whereby POP was applied. The respondent in the *Lucy Waruguru Gatutu v Francis Kinyanjui Njuku* (Supra) sustained multiple fractures and medical examination a year later revealed the long term effects that the Respondent would endure.

10. Considering the circumstances of the case, and the evidence on record and the cases cited, I cannot say that the trial magistrate erred in awarding Kshs. 500,000.00 as general damages for pain and suffering.
11. I dismiss the appeal with no orders as to costs.

DATED AND DELIVERED AT NAIROBI THIS 12TH DAY OF FEBRUARY 2024.

D. S. MAJANJA

JUDGE

Mr Wawery instructed by Mbai Waweru Advocates for the Appellant.

